IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 422 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DCM HYUNDAI LIMITED

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 422 of 2001

SINGHI & CO for Petitioner No. 1-8

MR VM PANCHOLI A.P.P for Respondent No. 1

NANAVATI ASSOCIATES for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 07/11/2003

JUDGEMENT

This is a petition under section 482 of the

Criminal Procedure Code, 1973, (for short, 'the Code') for quashing a complaint being criminal case No.360 of 2000 filed by respondent no.2, herein, against the petitioners for an offence punishable under section 420 read with section 114 of IPC. The said complaint has been placed at page no.27 at Annexure 'B' to the petition. The second respondent has been shown as the complainant and the petitioners herein have been shown as accused persons in the said complaint. There it has been alleged that the complainant being the second respondent herein is a Body Corporate carrying on business as manufacturer of various Hot Rolled Coils/sheets/plates etc. at its workplace at Hazira, in District Surat of Gujarat State. That it has its registered office at the same place. The second respondent has also alleged in the complaint that the first petitioner is a limited company and other petitioners are responsible officers and Directors of the said company. In order to appreciate the said contentions, both factual and legal, it would be appropriate to reproduce paras 3 to 8 hereinbelow:

"(3). The accused no.1 is a limited company carrying on business at the address mentioned in the cause title. Accused no.2 is a Chairman. Accused no.3 is a Managing Director, accused no.4 is Whole-time Director and accused nos. 5, 6, 7 and 8 are Directors of accused no.1-company. They all are/were at all relevant time in-charge or responsible to the company for conduct of its business and as such all of them are liable to be convicted and for punished for aforesaid offence on following main grounds.

(4) The accused persons against various Bills of Exchange purchased Hot Rolled Coils/sheets/plates from the complainant company at Hazira District Surat and the accused persons have accepted for payment, those Bills of Exchange each of 90 days, drawn by the complainant and the accused have received the required materials with invoices thereof during the period from February 1997 to December, 1997.

(5) While purchasing the materials from the complainant, accused persons had promised to make its payment on due date of Bills

of Exchange and thereby the accused had induced the complainant company to supply to them, the required materials and accordingly the complainant actually supplied to them the required materials and invoices thereof and having received the materials, accused did not make its payment and without any valid reason, Bankers of the accused dishonoured, the Bills of Exchange which were sent to them for payment by Allahabad Bank, Nanpura Bank, Surat, as Banker of the complainant.

(6) The complainant company keeps Books of Account in regular course or business and as per books of accounts of the complainant, balance outstanding against the accused persons is of Rs.72,92,906.34 paise plus over due interest @ 24% per annum from 1.1.1998 to 31.10.2000 which comes to Rs.71,95,577.97 ps. So, total outstanding against the accused comes to Rs.1,44,88,483.31 ps. The accused persons have confirmed the balance of Rs.61,45,885.31 ps. on 30.10.1998 in writing as payable to the complainant. Even then the accused persons have not paid even that much amount.

(7) The complainant have written various letters to the accused persons and had demanded their dues but the accused persons did not pay it and went before the Board of Industrial and Financial Reconstruction, New Delhi by lodging case no.151/98. The complainant has got noted their claim before the said Board and has requested the Board to join them as a party.

(8) Above conduct of the accused persons in inducing the complainant company to deliver to them required materials on the strength of false promises of making payment on due dates and in accepting for payment on due dates, various Bills of Exchange and after receipt of the materials backing out from their promises and in dishonouring the Bills of Exchange through their Bankers without any valid

reason, clearly indicate that right from inception the accused had no intention to fulfil their promises and to pay aforesaid dues of the complainant even then they obtained valuable materials from the complainant by fraudulent means and thereby all the accused persons in abatement of each other have cheated the complainant and thereby they have committed an offence punishable under section 420-114 of Indian Penal Code."

2. Therefore, according to the allegations made in the complaint, the second respondent was induced to part with the goods stated in the complaint on a promise of payment of the value thereof and since the second respondent was induced as aforesaid by the petitioners herein, the second respondent parted with the goods stated in the complaint and thereafter the payment was not made and, therefore, according to the case of the second respondent, the second respondent was cheated jointly by the petitioners herein and thereby the petitioners are said to have committed an offence punishable under section 420 and read with section 114 of IPC. On receiving the said complaint, process of summons appears to have been issued by the learned Judicial Magistrate First Class at Surat. The petitioners - original accused persons have produced on record copies of summons at Annexure 'C' (colly.).

3. The petitioners-original accused persons in the aforesaid criminal complaints have come forward with this petition under section 482 of the said Code stating that no offence has been made out on a bare reading of the said complaint that there is only a civil dispute and no elements or ingredient of criminality has been shown in the complaint. That it is simply a contract of sale and purchase of goods on credit wherein even if it is accepted that the goods were delivered on credit by the second respondent to the petitioners and that the petitioners failed in paying the value of the said goods, then also it may amount to non-payment of goods received and consequently it would not amount to an offence of cheating. It is also contended that there is no element of inducement in the complaint but there is a case of genuine sale and purchase between the parties. Therefore, the question of inducement does not arise and consequently it would not be an offence of cheating. It is further contended that for the purpose of committing an offence of cheating, it is always necessary that there is dishonest intention on the part of the accused person

right from the inception. That in the present case, the parties were at contract for sale and purchase of goods. Some goods were delivered to the petitioners on credit and thereafter, payments were made. However, at subsequent stage, because of the adverse financial condition of the petitioners, payments could not be made and, therefore mere non-payment in respect of the goods purchased on credit and received by the petitioner company would not amount to an offence of cheating. That there would also be a matter of civil dispute between the parties without any element of criminality. It is further contended that the second respondent had supplied goods to the petitioners valued at more than Rs. 4 crores during the year 1995-97, in ordinary course of business and had raised various invoices on the first petitioner for the supplies so made. However, the first petitioner, against the said supplies made by the second respondent, had paid on various dates, a total amount of more than Rs. 3,00,50,000 to the second respondent. That these dealings make it clear that the petitioners did not possess fraudulent intention at any point of time. That on account of adverse financial condition the first petitioner was required to file an application before the Board of Industrial and Financial Reconstruction (for short, 'the BIFR') under the Sick Industrial Companies (Special Provisions) Act, 1985. That the said revision was registered as Case No.151/98 and that since the BIFR was satisfied with the net worth of the first petitioner company it has declared the first petitioner company as a sick industrial company under the provisions of Section No.3(i) of the said Act and appointed Industrial Finance Corporation of India Limited which has been named as IFCI limited as he operating agency under section 17(3) of the said Act for formulating and considering the viability of rehabilitation scheme and to suggest measures for reconstructing the first petitioner company. That the learned Judicial Magistrate did not apply his mind to the facts and circumstances of the case and has straight way issued process mechanically on the complaint. That in that view of the matter, the complaint also suffers from infirmity of non-application of mind. That on the one hand there may be civil dispute between the parties, on the other hand, mere non-payment of the value of the goods purchased on credit may amount to criminal offence. Thirdly, it is contended that there is no case of fraudulent or dishonest inducement. That there is also no element of cheating on the part of the petitioners and, therefore, no offence is made out even on a bare reading of the complaint in question. In above view of the matter, the petitioners have come with this petition

under section 482 of the said Code for quashing the said complaint being criminal complaint No.360 of 2000 pending before the learned Judicial Magistrate First Class, Surat.

4. It seems that urgent notice as to show cause was issued on 22.1.2001 at the first instance and rule was issued by consent on 4.4.2003. In response to the service of notice of rule, Mr S J Dave, learned APP appeared on behalf of the state whereas Mr K S Nanavati, learned Senior Advocate appearing for M/s. Nanavati Associates has appeared on behalf of respondent No.2 the original complainant.

5. I have heard Mr N D Nanavati, learned Sr.Counsel appearing for Singhi & Co. for the petitioners, Mr V M Pancholi, learned APP for the State and Mr K S Nanavati, learned Sr.Advocate for M/s. Nanavati Associates for respondent No. 2 original complainant. Incidentally, they have taken me through the complaint and other materials on record.

6. Learned Sr.Advocate appearin for the petitioners has argued at length that there being civil disputes for non-payment of goods said to have been supplied by the second respondent to the petitioners and there being no element or ingredient of criminal offence, the trial court ought not to have issued process on registration of the complaint of the second respondent. On the other hand, Mr K S Nanavati, learned Sr. Advocate appearing for the contesting respondent has argued at length that thee was a clear case of inducement and dishonest intention on the part of the petitioner and, therefore, the trial court was justified in issuing process against the petitioners.

7. From the complaint of the contesting respondent as well as from the oral arguments of M/s.Nanavati Associates following points emerge:

(1) The first petitioner is a limited Company and the remaining petitioners are the Directors thereof. The second respondent is also a limited Company.

(2) The second respondent has supplied certain goods on credit to the first petitioner Company and as per the case of second respondent an amount of Rs.72,92,905.34/shown as outstanding in the said account. Interest at the rate

of 24% has been calculated by the second respondent.

(3) As per the case of the second respondent, the petitioners have confirmed the balance of Rs. 61,45,885.31/- as on 30th October 1998.

(4) The goods in question was received by petitioner no.1 and there is no dispute about the quality and quantity thereof.

(5) The petitioners have not paid the balance due to the contesting respondent.

(6) The petitioners feel that they are financially weak and therefore, have made a reference under Section 15 (1) of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "the Act") for determining of measures under the said Act before the Board of Industrial and Financial Reconstruction and it has been registered there as Case No. 161 of 1998.

(7) The contesting respondent has made efforts to get the amount back and the said respondent was unsuccessful in getting the money being the value of goods from the petitioners.

(8) Therefore, the second respondent filed the aforesaid complaint against the petitioners for an offence punishable under section 420 of IPC and the trial Court directed to issue process of summons against the petitioners.

8. The above aspects have not been seriously disputed even during the course of arguments advanced by the Learned Advocates for the parties.

9. As said above, the learned Sr.Advocate for the petitioners has argued that there was a business contract between the parties and in connection with the said contract, the petitioners have purchased some goods from the second respondent on credit and the petitioners could not pay the full value thereof, on account of financial constraints and, therefore, there is, at the best, a civil dispute between the two parties without involving

any criminal element. That, therefore, there is no case of any sort of criminal ingredient including inducement and dishonest intention on the part of the petitioners. That, therefore, the Trial Court has over looked this aspect while issuing process of summons against the petitioners. Therefore, the process issued by the Trial Court is required to be quashed.

10. On the other hand the learned Sr.Advocate for the contesting respondent has argued at length that the complaint clearly contains allegations of criminal mind on the part of the petitioners. That, even in the complaint itself it has been alleged that the petitioners had induced the second respondent to part with the goods of huge amount and yet the petitioners did not pay the amount being the value of the said goods received on credit from the second respondent. That there was initial dishonest intention on the part of the petitioners and, therefore, the offence punishable under Section 420 of IPC is prima-facie made out against the petitioners even on a bare reading of the complaint.

11. In support of their rival contentions the learned advocates for the parties have referred to certain decisions.

(1) In Smt. Chitra Nandlal v. Bachubhai Chhaganlal & Ors. reported in 1980 Gujarat Law Times 103 it has been observed that the Courts should closely scrutinize the evidence and materials before taking cognizance of an offence.

(2) In Hari Prasad Chamaria v. Bishun KUmar Surekha and Others reported in AIR 1974 Supreme Court 301, the facts were little different. The appellants intended to start business and, therefore, needed a large amount which was parted by the appellant, for the said purpose. The respondent started business in their own names. There was nothing to show that the respondent had dishonest or fraudulent intention at the time when the appellant parted with money nor was it shown that the appellant was induced by the respondent. There was no allegation that the respondent made some representation to the appellant at the time when the money was parted with. There it was observed by the Hon'ble

Supreme Court that there was no criminal liability on the part of the accused persons.

(3) In Ashok Chaturvedi and Others v. Shitul H. Chanchani and Another reported in 1998 Vol. (94) Company Cases P. 401 the complaint was made against the officer of a public company with respect to cheating in respect of transfer of shares. There were allegations about forged and fabricated signatures. The petition was quite different and the ingredients of offence were not made out against the accused person.

(4) In the State of Haryana v. Brij Lal Mittal and Others reported in 1998 Company Cases 329 it has been observed that the Directors must be shown to be incharge and responsible to a Company for its business under Section 31 (1) of the Drugs and Cosmetics Act, 1940.

(5) In Gopi Shanker v. State of Gujarat reported in 271 (1) GLR 267 the matter related to an offence under the Prevention of Food Adulteration Act, 1954. The Company had nominated one particular Director under Section 17 (2) of the said Act. There it was observed that other Directors were not required to be prosecuted unless it is shown that there was consent or connivance on their part.

(6) In State of Haryana v. Bhajan Lal reported in 1992 SC 604 certain guidelines were issued by the Hon'ble the Supreme Court. The learned Sr.Advocate for the petitioners has relied upon Guideline No.5 which may be reproduced for ready reference as follows:

"5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground

for proceeding against the accused.

(7) In Tarun K. Shah v. C.R. Alimchandani and Others reported in (2001) 9 SCC 728 it has been observed that when allegations have been made in the complaint that all the three accused persons were involved in forgery then it would not be necessary that there should be separate allegation against accused no. 2. In that case a complaint cannot be quashed under Section 482 of the said Code.

(8) In Medchl Chemicals & Pharma (P) Ltd reported in (2003) 3 Supreme Court Cases 269 it has been observed that simply because a transaction is a criminal transaction, it cannot be said that it would not involve any offence of cheating or misappropriation. It has also been observed that the Court has to consider as to whether on fact situation, civic profile outweighs criminal outfit or whether it is vice-versa.

(9) In Mahavir Prashad Gupta and Another v. State of National Capital Territory of Delhi and Others reported in (2000) 8 SCC 115 the facts were like this:

"9.1 Goods was entrusted to accused transporter, lorry receipt was issued. However, the goods was not delivered at the destination as per the contract and as per the lorry receipt. There was an allegation in the complaint about criminal breach of trust. In that case it was observed that the police was required to investigate the FIR and therefore, such FIR could not be quashed under Section 482 of the said Code."

(10) In Lalmuni Devi v. State of Bihar reported in (2001) 2 SCC 17 it has been observed that merely because there was a civil wrong, the complaint cannot be

quashed under Section 482 of the said Code.

(11) In Rajesh Bajaj v. State NCT of Delhi and Others reported in (1999) 3 Supreme Court Cases 259 it has been observed that if an offence is prima-facie made out then the complaint cannot be quashed under Section 482 of the said Code on the ground that there is a commercial dealing between the parties.

12. So far the decision in AIR 1992 Supreme Court Cases 604 (supra) is concerned the learned Sr.Advocate for the contesting respondent has also relied upon an observation made therein as follows:

"Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified".

13. On the strength of the aforesaid citations the learned Sr.Advocate for the petitioners has again argued that there is a simple civil dispute arising out of a civil and commercial contractual transaction. That, it is a simple case of delivery of goods on credit and non payment of value thereof. That in that case it may be open to the contesting respondent to file a civil suit for the recovery of the value of the goods said to have been supplied by the second respondent to the petitioners. That, however, it is not open to such a party to go for a criminal litigation since there is no criminality. There is no inducement. There is no dishonest intention on the part of the petitioners. That there is a simple case of inability to pay the value of goods on account of financial constraints. That, therefore, the complaint is required to be quashed on a simple ground that there is a simple civil dispute of non payment of value of goods, on account of inability to pay the same because of financial constraints on the part of the petitioners.

14. Now, so far the ingredients of the complaint are concerned, it is required to be considered that the relevant allegations of the complaint have been reproduced hereinabove for ready reference. It is

required to be considered that in para 3 of the complaint, it has been specifically alleged that the first petitioner is a limited Company. That accused no.2 is the Chairman, accused no.3 is the Managing Director, accused no.4 is the whole time Director and accused Nos.5 to 8 are the Directors of petitioner no.1 and that they were all, at all relevant time, incharge or responsible to the Company for the conduct of its business and as such all of them are liable to be convicted and punished for the aforesaid offence on the grounds stated in the complaint.

15. It is, therefore, clear that the involvement of all the petitioners in the commission of offence has been alleged in the complaint. Therefore, it cannot be said that petitioner no. 2 onwards are simply the Directors and, therefore, no offence can be said to have been made out against them. When allegations have been made that these are all the Directors who are incharge or responsible to the Company for the conduct of its business, then in that case, it has to be accepted that allegations have been made in the complaint regarding the involvement of all the petitioners in the commission of the offence in question.

16. Now, whether or not they are or they were really in charge or responsible to the company for the conduct of its business, is a question of fact, which can be dealt with and decided by the trial Court on appreciation of evidence which may be produced before it at the stage at which the trial may proceed. At present, we are not concerned as to whether the allegations are correct and genuine. We cannot decide, at this stage, the truthfulness of the allegations made in the complaint. While considering an application for quashing a complaint under Section 482 of the said Code, the only requirement is to ascertain as to whether the allegations made in the complaint, if stand uncontroverted, would lead to some offence. Applying the said ratio to the facts in hand, it would be quite clear that there are allegations against the petitioners regarding their involvement in the complaint and, therefore, the second respondent has to be given an opportunity to proceed ahead with the complaint and to prove the allegations made in para 3 of the complaint. It may be that the second respondent may be able to prove the said allegations qua the petitioners. The second respondent may not be able to prove the said allegations against petitioner no.2 and onwards. The second respondent may be able to prove the allegations made in para 3 of the complaint against some of the petitioners.

17. Thereafter, on appreciation of materials on record the Trial Court will have to decide whether charge could be framed against all or some of the petitioners or whether there could not be any charge against any of the petitioners.

18. An offence punishable under Section 420 IPC is a warrant triable offence and therefore, the complainant will be required to produce evidence before the Court and on appreciation of the said evidence the Court will be required to consider as to whether there is sufficient material for framing of charge against the petitioners or any of them. Therefore, at the present stage this Court is required only to consider if the allegations made in the complaint would lead to some offence. Applying the said principle here it would be clear that the allegations made in para 3 of the complaint referred to hereinabove, go to show that there is an involvement of all the petitioners in the offence in question. Therefore, one or more petitioners cannot be discharged and the complaint cannot be quashed against them at this juncture.

19. Then so far the factual aspects are concerned, the second respondent has alleged in paras 4,5,6 etc. of the complaint that the petitioners against various Bills of Exchange, purchased the goods from the second respondent on credit. That the petitioners have also accepted for the payment of those Bills of Exchange of 90 days drawn by the second respondent and that the petitioners have received the required materials with invoice thereof during the period from February 1997 to December 1997. This is again a question of fact and, therefore, the second respondent will be getting a right of producing evidence to prove the allegations made in these paras of the complaint. It would be open to the second respondent to produce materials in order to prove that the goods was supplied in accordance with the agreement and the payments were required to be made in accordance with the allegations made in these paras of the complaint. Therefore, this would again be a question of fact, which would be required to be dealt with and decided by the trial Court on appreciation of material, which may be placed before the said Court before the charge is framed.

20. It has then been contended in para 4 (sic para 5) that the petitioners had promised to make the payment of the said goods on the due dates of Bills of Exchange and thereby had induced the second respondent to supply them

the required materials. Accordingly, the second respondent supplied the said materials to the petitioners and invoice thereof were also supplied to the petitioners. That the petitioners had received the materials and invoice and yet did not make payment without any valid reasons. This will again be a question of fact which may be dealt with and decided by the trial Court on appreciation of materials that may be produced before it by the parties.

21. So far para 6 is concerned there is a reference to the accounting method showing the actual amount due to the second respondent by the petitioners with respect to the goods supplied to them by the second respondent on credit and the amount paid by the petitioners to the second respondent towards the said dues. This is again a question of fact which may be dealt with and decided by the Trial Court on appreciation of materials that may be produced before it by the parties.

22. Para 7 refers to the notices and letters issued by the second respondent to the petitioners demanding the dues. There is also a reference to the effect that the petitioners did not pay the amount due to the second respondent and went before the Board of Industrial and Financial Reconstruction, New Delhi by lodging Case No.161 of 1998 and the second respondent has also registered their claim before the said Board and have requested the Board to join them as a party.

23. At this stage the learned Sr.Advocate for the petitioners has argued that this would again show a civil dispute between the parties. It is his argument that when a case is pending before the aforesaid Board and when the second respondent is also a party claiming its dues against the petitioners, then in that case it would again be a matter of civil dispute between the parties.

24. Now, if a party has two recourses, one for going to the Civil Court and another for going to the Criminal Court, then it would be open to the said party to go for either or both the said processes. Therefore, if the second respondent has opted to register its case before the said Board for the recovery of amount which is also the matter in question in the present case, then in that case, it cannot be said that the second respondent has relinguished its right to go to a Criminal Court. Even otherwise a party going to a Criminal Court is never disentitled from going to a Civil Court or going for a civil remedy. Such a party is required to go for a civil remedy also since a civil remedy will be barred by

limitation, if it is not availed of within the stipulated period of limitation. Therefore, simply because the second respondent has lodged its claim before the said Board, it cannot be said that no offence is made out.

25. It has also been contended by the learned Sr.Advocate for the petitioners that the second respondent had time and again demanded the amount being the value of the goods said to have been supplied by the second respondent to the petitioners and even notices were issued and served upon the petitioners demanding the said amount. This shows the existence of a civil dispute between parties. In my opinion, simply because notices were issued and letters were written for demanding the amount of value of the said goods, it would not mean that there is no criminal element in the transaction between the parties. As said above, the second respondent has come out with a case that certain goods were supplied, but value thereof has not been paid in full to the second respondent by the petitioners, meaning thereby, that some amount is due to the second respondent by the petitioners. In view of this fact situation, when dues were there, the second respondent was entitled to claim its dues, either by issuing letters or by issuing notices or by taking civil remedies, either before the said Board or by any other mode available to him according to law. Therefore, simply because notices were issued or letters were written demanding the said dues it cannot be said that there is no criminal element or ingredient present in the present case or that the right to go to a criminal Court was given up.

26. In para 8 of the complaint again there is a clear indication that the present petitioners have exhibited their conduct in inducing the present second respondent to deliver them the required materials on a false promise of making the payments on due dates and in accepting for payment on due dates various bills of exchange and after receipt of materials breaking up their promise and dishonouring the bills of exchange through their banks without any valid reason. It is further alleged that it clearly indicates that right from the inception of the contract the petitioners had no intention to fulfill their promise and to pay the aforesaid dues of the second respondent. Even then the petitioners obtained and continued to obtain materials from the second respondent by fraudulent means and thereby all the petitioners, in abatement of each other, have cheated the second respondent and committed an offence punishable under Section 420 read with section 114 of Indian Penal Code.

27. Therefore, the ingredients of the offence are in existence which can be gathered on a bare reading of para 8 of the complaint.

28. The learned Sr.Advocate for the petitioners has argued here that these are simple bare allegations. Now, so far the complaint is concerned it is not required to be exhaustive in all aspects. Even the ingredients of an offence may not be placed in the complaint in the context of the particular Section of the Indian Penal Code. The Court has to gather the intention of the parties from the allegations made in the complaint and from the surroundings. The allegations made in para 8 of the complaint clearly go to show that there is a prima-facie case of existence of a criminal offence, dishonest intention and inducement in the complaint and, therefore, the complaint cannot be thrown away on a ground that there is a civil dispute between the parties.

29. In support of the said contentions, the Learned Advocates for the parties have taken me through the averments made in the document placed at Annexure A (page 19). This is a direction issued by the aforesaid Board. It would be worthwhile to refer to para 2 of the said document as follows.

"2. At today's hearing, the learned Counsel representing H/s. DCM Hyundai Ltd. (DCMIL), while stating the networth of the company Rs. 3381.49 lacs) (paid up captial Rs.3141.49 lacs and free deserved Rs.240 lacs) and accumulated losses as Rs.4614.24 lacs as on 31.3.1998; added that the Company had been incurring losses since inception. The losses in the year 1995-96 were stated to be Rs. 12 crores, in 1996-97 Rs. 14 crores and in 1997-98 about Rs. 19 crores. He further stated that the sales in 1997-98 declired to Rs.51.52 crores from Rs. 60.38 crores in 1996-97. the reasons for sickness were stated to be free imports of cheap containers from China which did not attract any custom duty. The domestic container units cannot compete with Chinese, because of higher per 'unit cost', due to variety of reasons. There are four such units in the country and all of them are having serious marketing problems. Further, due to EXIM policy of the Government of India, sale to domestic

> containers operators against the Indian rupess is not considered as deemed export even if the containers were being used for export purposes. He complained that the Government of India does not provide level playing field to the Indian manufacturers since it does not give the status of deemed export for sale to Indian container buyers as custom and excise duties are payable even if an Indian buyer gave an undertaking that the containers were being used for export purposes. Further, paucity of working capital funds also added to the financial problems of the Company".

30. On going through para 2 of the said document and considering the contents of the said document, it is very clear that the petitioners have placed a case before the said Board stating that the petitioners were running their business in loss right from the beginning. Looking to the contents of the said document, it is clear that the Company was running in loss right from the beginning and right from the inception of its establishment. This would mean that the financial condition of the petitioners was never healthy, happy or satisfactory. In other words, the petitioners knew that their financial condition was extremely poor and therefore, it would not be possible for them to pay the value of the goods purchased by them and supplied to them by the second respondent. In that view of the matter, it was not necessary for the petitioners to give promise and to purchase the goods on credit.

31. The Learned Sr.Advocate for the contesting respondent has heavily relied upon this document stating that this shows the financial incapability of the petitioners to pay the value of the goods purchased by them on credit. That, though the petitioners knew their financial incapability, they continued to give promises to pay the value of the goods within the stipulated period. That when the petitioners knew that they were unable to pay and yet continued to promise to pay and continued to purchase goods on credit from the second respondent, it prima-facie shows that the petitioners had dishonestly induced the second respondent to part with the goods on a promise to pay the value thereof.

32. On the other hand, the learned Sr.Advocate for the petitioners has argued that the Court has to depend upon the complaint and no other material can be looked

into for the purpose of deciding a petition under Section 482 of the said Code.

33. It is true that in order to appreciate an application under Section 482 of the said Code, the Court is required to consider the allegations made in the complaint. Now, so far the allegations made in the complaint are concerned, prima-facie they are sufficient to proceed ahead with the said complaint. There are allegations of inducement and dishonest intention on the part of the petitioners.

34. When it has been argued that there are only allegations then in support of the said allegations the learned Sr.Advocate has relied upon the aforesaid document at page 19 from where it has been shown by the contesting respondent that even according to the case of the petitioners, their financial condition was extremely weak and poor right from the beginning and yet they purchased the goods on credit from the second respondent. Therefore, this document is being relied upon by the second respondent only with a view to prima facie substantiate the allegations made in the complaint. This is not a document which can be said to be a disputed one. It is an order from a responsible Statutory Board passed on the strength of the case placed before it by the petitioners. It is not the case of the petitioners that the petitioners did not make out a case in the said reference in accordance with the statement of fact referred to hereinabove and made in the said guidelines. The petitioners have not disputed the correctness of the fact situation of the said document. In that view of the matter, it cannot be said that this document cannot be relied upon by the second respondent for substantiating the case pleaded in their complaint and in opposing the present petition filed under Section 482 of the said Code.

35. In above view of the matter, when the petitioners are shown to have made promises for payment of the value of the goods to the second respondent knowing their inability to pay the same and when the goods has been purchased and supply has been accepted on such promise, then in that case, it can be said, prima-facie, that the petitioners did fraudulently induce the second respondent to part with the goods and thereafter did not pay the value of the goods and filed a reference before the said Board under Section 15 (1) of the said Act. In that view of the matter, it has to be accepted that ingredients of an offence punishable under Section 420 IPC have been prima facie made out and therefore, the complaint cannot

be quashed by this Court. Therefore, there being no substance in the present application, it is required to be dismissed.

36. For the foregoing reasons this petition filed by the petitioners above named under Section 482 of the Code of Criminal Procedure, 1973 for quashing Criminal Case No. 360 of 2000 pending before the learned Judicial Magistrate, First Class, at Surat is ordered to be dismissed. Rule is discharged. Interim relief, if any, shall naturally stand vacated.

[D.P. Buch, J.]

/msp/ Smita/

Further orders

After pronouncement of the above order, the learned advocate for the petitioners submits that the petitioners desire to carry the matter to a higher Court for challenging the same and therefore, interim relief granted by this Court and continued till today may be extended for a further period of 8 weeks. The learned advocate for the respondent and the learned APP object to the aforesaid prayer. After hearing them, the interim relief granted earlier is ordered to be extended for a period of six weeks from today.

(D. P. Buch, J.)

/msp/smita